

Oracle Corporation et al v. SAP AG et al

1 Robert A. Mittelstaedt (SBN 060359)
 2 Jason McDonell (SBN 115084)
 3 Elaine Wallace (SBN 197882)
JONES DAY
 4 555 California Street, 26th Floor
 San Francisco, CA 94104
 Telephone: (415) 626-3939
 Facsimile: (415) 875-5700
 ramittelstaedt@jonesday.com
 jmcdonell@jonesday.com
 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)
 8 Jane L. Froyd (SBN 220776)
JONES DAY
 9 1755 Embarcadero Road
 Palo Alto, CA 94303
 Telephone: (650) 739-3939
 Facsimile: (650) 739-3900
 tglanier@jonesday.com
 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)
 13 Joshua L. Fuchs (Admitted *Pro Hac Vice*)
JONES DAY
 14 717 Texas, Suite 3300
 Houston, TX 77002
 Telephone: (832) 239-3939
 Facsimile: (832) 239-3600
 swcowan@jonesday.com
 jluchs@jonesday.com

17 Attorneys for Defendants
 SAP AG, SAP AMERICA, INC., and
 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,

Case No. 07-CV-1658 PJH (EDL)

23 Plaintiffs,

DECLARATION OF WERNER BRANDT
 IN SUPPORT OF PLAINTIFFS'
 ADMINISTRATIVE
 MOTION TO PERMIT PLAINTIFFS
 TO FILE UNDER SEAL
 DEFENDANTS' INFORMATION
 SUPPORTING PLAINTIFFS'
 OPPOSITION TO DEFENDANTS'
 MOTION FOR PARTIAL
 SUMMARY JUDGMENT

24 v.

25 SAP AG, et al.,

26 Defendants.

27
 DECLARATION OF WERNER BRANDT ISO OF
 ADMINISTRATIVE MOTION TO SEAL
 Case No. 07-CV-1658 PJH (EDL)

28 SVI-72743v1

1 I, WERNER BRANDT, declare as follows:

2 1. I am the Chief Financial Officer of SAP AG and a member of its Executive Board.
 3 I have personal knowledge of the facts stated in this declaration and could competently testify to
 4 them if required.

5 2. Exhibit 44 to the Declaration of Paul K. Meyer in Support of Plaintiffs' Opposition
 6 to Defendants' Motion for Partial Summary Judgment ("Meyer Declaration") is an excerpt from
 7 an SAP document entitled "SAP AG, Fair Value of Certain Assets, Liabilities and Legal Entities
 8 of Business Objects S.A. As of January 21, 2008." Exhibit 44 contains non-public, commercially
 9 sensitive and confidential information, the disclosure of which would create a risk of significant
 10 competitive injury and particularized harm and prejudice to SAP. Specifically, Exhibit 44
 11 consists of a non-public October 5, 2008 analysis by Deloitte Financial Advisory Services LLP of
 12 the fair value of certain assets and liabilities of Business Objects S.A., which SAP acquired on
 13 January 21, 2008. Disclosure of this information would grant SAP's competitors, partners,
 14 customers, future acquisition targets, and other interested parties insight into SAP's internal
 15 assessments, strategy and operations, providing them with an unfair competitive advantage over
 16 SAP with respect to current and future operations and negotiations. Additionally, disclosure of
 17 this internal and highly-sensitive information about the value of the assets and liabilities of a
 18 recent acquisition could potentially affect stock values. This document is treated as confidential
 19 within SAP. I also understand that Defendants have protected Exhibit 44 from improper public
 20 disclosure through the Stipulated Protective Order ("Protective Order") that is designed to prevent
 21 the parties' private, commercial information from being improperly disclosed. Under the terms of
 22 the Protective Order, Defendants have designated Exhibit 44 "Highly Confidential – Attorneys'
 23 Eyes Only."

24 3. I have also reviewed portions of Plaintiffs' Opposition to Defendants' Motion for
 25 Partial Summary Judgment Regarding Plaintiffs' Hypothetical [Fair Market Value] License
 26 Damages ("Opposition") at 22:13-14 and portions of the Declaration of Lawrence Ellison in
 27 support at 3:21-23, which both reference payments made by SAP to Oracle pursuant to the
 28 parties' database reseller agreement. Information regarding the amount SAP has paid to Oracle

1 over the last seven years pursuant to the ongoing database reseller agreement comprises non-
2 public, commercially sensitive and confidential information, the disclosure of which would create
3 a risk of significant competitive injury and particularized harm and prejudice to SAP. In
4 particular, disclosure of the royalty payments SAP has paid to Oracle over the last seven years
5 would impact other reseller relationships SAP maintains with other database vendors. Permitting
6 SAP's other database partners access to information regarding the price SAP pays to license
7 Oracle database technology would provide these entities with an unfair competitive advantage
8 with respect to future negotiations regarding their ongoing database licenses with SAP. SAP
9 treats the amount it has paid Oracle in royalties pursuant to the parties' database reseller
10 agreement as confidential and does not permit public disclosure of this information.

11 I declare under penalty of perjury under the laws of the United States and the State of
12 California that the foregoing is true and correct. Executed this 30 day of September, 2009 in
13 Walldorf, Germany.



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15 Werner Brandt
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